

## BIDDER INSTRUCTIONS

### 1. DEFINITIONS:

- a) "Bid" means an offer, made in response to a solicitation to perform a contract for work and labor or to supply goods at a specified price, whether or not it is considered a "sealed bid" or results in award of a contract to a single or sole source.
- b) "Bidder" means a supplier who submits a bid to the State in response to a solicitation.
- c) "Solicitation" means the process, by whatever name known or in whatever format used, of notifying prospective bidders that the State wishes to receive bids for furnishing goods or services.
- d) "Supplier" means a business entity, bidder, offeror, vendor or contractor.

### 2. SUBMISSION OF BIDS:

- a) Bids must be hand delivered or sent via U.S. Mail or common carrier unless another method (e.g., facsimile) is specifically authorized in the solicitation.
- b) Where a "sealed" bid is required, each bid shall be separately sealed inside an envelope and must be signed and received by the closing time and date specified, and on the forms furnished by the State to be considered for award. The State reserves the right to consider authorized facsimile bids as properly "sealed" if received prior to the closing time specified, provided that a signature is shown on the facsimile.
- c) The bidder is solely responsible for ensuring that the full bid is received by the State in accordance with the solicitation requirements, prior to the date and time specified in the solicitation, and at the place specified. The State shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or misdelivery.
- d) If facsimile transmission of the bid is acceptable, and the bidder chooses to transmit their bid via facsimile, the bidder understands and agrees that the State will consider only those portions of the bid received prior to the closing time specified; any pages received after that time will not be considered.
- e) If no time for receipt of bids is specified in the solicitation, the bid shall be due by the close of the business day on the date indicated. Close of the business day shall be 5:00 p.m. Pacific Standard Time (PST)/Pacific Daylight Time (PDT).
- f) Generally, sealed bids will be opened and read on the due date unless another date and time is specified in the solicitation or any addendum thereto.
- g) Bids received after the time stated will be considered non-responsive.

### 3. SOLICITATION ADDENDUM (ADDENDA):

- a) If a supplier received this solicitation through some means other than being a prequalified supplier on the State's bidders list, it is the responsibility of the supplier to advise the buyer of its intention to provide a bid so that addenda or other correspondence related to the solicitation will be sent to the supplier.
- b) In the event that the solicitation is revised by an addendum, supplier shall submit the original solicitation and any addenda required to be submitted by the buyer.
- c) Price(s) offered shall reflect all addenda issued by the State. Failure to do so will permit the State to interpret the bid to include all addenda issued in any resulting contract.

### 4. PRICES:

- a) All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person(s) signing the bid.
- b) Unless a total bid price is specified, all bids must indicate unit prices for each separate line item and extended price totals or if no price is shown it shall be considered a "no bid" and the supplier may be determined non-responsive.

- c) Unit prices may not be more than four (4) places to the right of the decimal point. For example, a unit price of \$.56726 each, would exceed this limitation. Unit prices which exceed this limitation will automatically be truncated to the fourth decimal place for both evaluation and award purposes. Using the example just cited, the "6" at the end of the unit price would be truncated (i.e., dropped off) leaving a unit price of \$.5672 each.
- d) In case of discrepancy between the unit price and the extension set forth for the item, the unit price shall prevail; however, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, the amount set forth in the "Extension" column shall be divided by the quantity for the item and the price thus obtained shall be the unit price. In case of discrepancy between the totals shown on the bid and the actual sum of the item totals, the actual sum of all item totals shall prevail.

- 5. **INSPECTION OF SOLICITATION DOCUMENTS:** Supplier shall carefully review all documents referenced and made a part of this solicitation to ensure that all information required to properly respond to the solicitation has been received or made available and all requirements are priced in the bid. Failure to examine any document, drawing, specification, or instruction will be at the supplier's sole risk.

- 6. **BRAND NAMES:** Any reference to brand names and/or numbers in the solicitation is intended to be descriptive, but not restrictive, unless otherwise specified. Bids offering equivalent items meeting the standards of quality specified may be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the referenced brand. Unless bidder specifies otherwise, it is understood that the bidder is offering a referenced brand item as specified in the solicitation. The State reserves the right to determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name references; and the State may require the supply of additional descriptive material and a sample.

### 7. EVALUATION OF BIDS:

- a) Where more than one line item is specified in the solicitation, the State reserves the right to determine the lowest responsible bidder, either on the basis of individual items, groups of items or on the basis of all items included in its solicitation, unless otherwise expressly provided.
- b) Unless otherwise specified in the solicitation, the State may accept any item or group of items of any bid unless the bidder expressly objects and conditions its response on receiving all items for which it provided a bid. In the event that the bidder so objects, the State may consider the bidder's objection and evaluate whether the award on such basis will result in the lowest price to the State or may determine in its sole discretion that such an objection is non-responsive and renders the bidder ineligible for award.
- c) All other criteria to be used in evaluating bids will be identified elsewhere in the solicitation.

- 8. **JOINT BIDS:** A joint bid submitted by two or more bidders participating jointly in one bid may be submitted and each participating bidder must sign the joint bid. If a contract is awarded to bidders who furnished a joint bid, it shall be deemed one indivisible contract. Each such joint contractor will be jointly and severally liable for the performance of the entire contract, and the joint contractors must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

- 9. **SAMPLES TO DETERMINE RESPONSIVENESS TO TECHNICAL REQUIREMENTS FOR PURPOSES OF AWARD:**

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- a) Samples of items, when required by the State, must be furnished free of expense to the State, unless otherwise provided.
  - b) Unless expressly set forth in the solicitation, the sample or samples furnished must be identical in all respects to the product or products being offered to the State.
  - c) Bidders offering products of a different manufacturer and model number than those specified in the solicitation may be required to submit samples for inspection and specification compliance testing in order for the State to determine if the item offered is equivalent to and meets the minimum standards of quality acceptable to the State as indicated by the manufacturer and model number specified in the solicitation.
  - d) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at bidder's expense.
10. **ALTERNATE BIDS:** Bidders are encouraged to consider the State's business needs and to recommend alternate solutions to the State's requirements if it will result in improvements, reduce the price, provide economical ordering quantities or deliveries, more economical packaging, bulk handling, changes to products that will offer additional features, finishes, etc., provided that the alternative solution will not impair any essential characteristics of form, fit or function, such as service life, reliability, ease of maintenance or interchangeability. Such recommendations, if made at least two (2) working days prior to the bid close date, may be considered and could result in an addendum to the solicitation. If the bidder chooses to recommend alternate solutions in a bid, they must be offered in addition to a bid which meets the State requirements as expressed in the solicitation. The State reserves the right to consider such alternate bids and to determine in its sole discretion whether an alternate bid solution is in the State's best interests or meets its needs. When furnishing an alternate bid, it shall be submitted separately from any other bid and be identified as an "alternate bid".
11. **CASH DISCOUNTS FOR PROMPT PAYMENT:** The State encourages bidders to offer cash discounts for prompt payment, however, unless provided elsewhere in the solicitation, cash discounts offered by bidders for the prompt payment of invoices will not be considered in evaluating offers to determine the successful bidder for award of any resulting contract.
12. **SPECIFICATION CONCERNS:**
- a) In the event a supplier believes that the State's solicitation is unfairly restrictive, ambiguous, contains conflicting provisions or mistakes or in the supplier's experience any resulting contract would be commercially impractical to perform, the matter should be promptly brought to the attention of the buyer identified in the solicitation, either by telephone, letter or visit, immediately upon receipt of the solicitation, in order that the matter may be fully considered and appropriate action taken by the State prior to the closing time set to receive bids.
  - b) Failure by any supplier to raise any concern relating to the solicitation requirements within at least two (2) working days prior to the bid close date, will be deemed a waiver of the supplier's right to protest any decision for contract award relating to the solicitation's requirements.
13. **VALIDITY OF BID:** Unless specified elsewhere in the solicitation, bidder's bid shall be valid for forty-five (45) days following the date the response is due.
14. **COST OR PRICING DATA:**
- a) The State may require the bidder to furnish cost or pricing data of the kind and in the form that the State may determine is necessary and appropriate to assess the fairness and reasonableness of a bidder's proposed price, as part of the bid or during evaluation of a bid.
  - b) By submission of a bid, the bidder agrees that bidder's books, records, documents and other supporting data relating to the subject(s) of this solicitation shall be made available to the State or its authorized representatives, for inspection and audit as required or in connection with any price negotiations. The State reserves the right to copy relevant portions of bidder's books, records, documents and other supporting data as it deems necessary.
  - c) All cost or pricing data furnished to the State shall be current, accurate and complete as of the time of submittal.
  - d) Failure to provide such cost or pricing data upon request may be grounds for determining the bidder is non-responsive and ineligible for award.
15. **MISTAKE IN BID:** If prior to contract award, a bidder discovers a mistake in their bid which renders the bidder unwilling to perform under any resulting contract, the bidder must immediately notify the buyer and request to withdraw the bid. It shall be solely within the State's discretion as to whether withdrawal will be permitted. If the solicitation contemplated evaluation and award of "all or none" of the items, then any withdrawal must be for the entire bid. If the solicitation provided for evaluation and award on a line item or group basis, the State may consider permitting withdrawal of specific line item(s) or group(s).
16. **STATE'S RIGHTS:**
- a) The State reserves the right to modify or cancel in whole or in part its solicitation at any time prior to contract award.
  - b) The State reserves the right to reject any or all bids if the State determines that a bidder's bid was non-responsive to the solicitation requirements and to waive informalities and minor irregularities in bids received.
  - c) The State reserves the right to reject any or all bids if the State determines that a bidder is not a responsible supplier.
  - d) Pursuant to Title 2 of the California Code of Regulations, Section 1890, the Department of General Services may remove the name of any supplier from its lists of prequalified bidders if the Department determines that the supplier is not a responsible supplier. This determination may be based on a supplier's past performance on State contracts as well as other factors referenced in the regulations.
  - e) To reduce costs to the State of mailing solicitations to suppliers who do not intend to bid, suppliers may also be removed from the State's list of prequalified bidders for failure to respond to three or more solicitations. Suppliers so removed may request re-qualification at any time.
17. **UNFAIR PRACTICES ACT AND OTHER LAWS:** Supplier warrants that its bid complies with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.) and all applicable State and Federal laws and regulations.
18. **VIOLATION OF AIR OR WATER POLLUTION LAWS:**
- a) Unless the contract is less than \$10,000 or with a sole source supplier, Government Code Section 4477 prohibits the State from contracting with a person, including a corporation or other business association, who has been determined to be in violation of any state or federal air or water pollution control law.
  - b) Prior to an award, the State shall ascertain if the intended awardee is a person included in notices from the Boards. In the event of any doubt of the intended awardee's identity or status as a person who is in violation of any state or federal air or water pollution law, the State will notify the appropriate Board of the proposed award and afford the Board the opportunity to advise the State that the intended awardee is such a person.
  - c) No award will be made to a person who is identified either by the published notices or by advice, as a person in violation of state or federal air or water pollution control laws.

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**19. NON-DISCRIMINATION TOWARD WTO GPA SIGNATORIES:**

Any contract resulting from this solicitation in excess of \$500,000 is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA). All bidders offering products or services of countries that are signatories to the WTO GPA and that have agreed to cover reciprocal subcentral coverage under the WTO GPA will be accorded non-discriminatory treatment in the award of contracts under this solicitation. These countries currently include the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom), Aruba, Hong Kong, Singapore, Israel, Japan, Korea, Liechtenstein, Norway, and Switzerland.

**20. INDEPENDENCE OF BID:** Unless supplier is furnishing a joint bid, by submitting this bid, bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of anti-trust laws.

**21. BID EVALUATION PREFERENCES:** In evaluating bids, the State will give preferences in accordance with the law for suppliers who are a California certified Small Business. If the bidder claims preferences under the Enterprise Zone Act (EZA), Target Area Contract Preference Act (TACPA) and Local Agency Military Base Recovery Area (LAMBRA) Act, the bidder must complete and return the appropriate forms incorporated in the solicitation. Preferences may also be given for bidders using recycled products in accordance with Public Contract Code Sections 10408 and 12150 et seq. Where multiple preferences are claimed, the State will verify eligibility for the preference(s) and evaluate and apply preference(s) in accordance with law and established procedures.

**22. PROTESTS:** The Department of General Services has established a **Protest Advocate** to assist bidders in accordance with Public Contract Code Section 10300. A **Protest Coordinator** has been appointed to serve as the Department of General Services, Procurement Division's primary point of contact for handling initial protests of solicitation requirements, as defined in Public Contract Code Section 12102(h) and award protests. The buyer can provide information to contact these resources by telephone, facsimile or email or contact the Procurement Division at (916) 445-2500 for assistance.

- a) If this solicitation is for the purchase of goods (i.e., materials, supplies and equipment, also known as "commodities"), the bidder may protest the proposed award on the ground that the bidder is the lowest responsible bidder meeting specifications, in accordance with Public Contract Code Section 10306.
- b) If this solicitation is for the purchase of information technology goods and/or services, a participating bidder may protest the proposed award on the ground that the bidder should have been selected in accordance with the selection criteria in the solicitation document, in accordance with Public Contract Code Section 12102(h).
- c) If this solicitation is conducted under the Alternative Protest Pilot Project, additional bidder instructions and protest procedures will be included in the solicitation, and the protest will be governed by the Public Contract Code Section 12125 et seq., and the regulations set forth in Chapter 5 of Division 2 of Title 1 of the California Code of Regulations (commencing with Section 1400).

**23. AMERICANS WITH DISABILITY ACT (ADA):**

To comply with the non-discrimination requirements of the ADA, it is the policy of the State to make every effort to ensure that its programs, activities and services are available to all persons, including persons with

disabilities. For persons with a disability needing a reasonable modification to participate in the procurement process, or for persons having questions regarding reasonable modifications for the procurement process, you may contact the buyer listed elsewhere in this solicitation.

a) If the contracting agency issuing this solicitation is an agency other than the Department of General Services, Procurement Division, the telephone numbers for TTY/TDD (telephone device for the deaf) or California Relay Service Numbers will be provided elsewhere in this solicitation.

b) If the agency issuing this solicitation is the Department of General Services, Procurement Division, you may also contact the Procurement Division at (916) 445-2500 (main office), or contact the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service Numbers, as follows:

• **Procurement Division TTY:**

Sacramento Office: (916) 322-7535

Fullerton Office: (714) 773-2093

• **California Relay Service:**

Voice: 1-800-735-2922 or

1-888-877-5379

TTY: 1-800-735-2929 or

1-888-877-5378

Speech to Speech: 1-800-854-7784

**Note:** To ensure that we can meet your need, it is best that we receive your request for reasonable modification at least **10 working days** before the scheduled event or the due date for procurement documents.